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IN THE

Supreme Court of the United States

October Term, 1964

No. 351

GRACE LINE INC.,

Petitioner,

v.

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENT IN OPPOSITION

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Question Presented

Whether an order of a state court confirming an arbitration award in which the arbitrator applied the precise terms of the applicable provisions of the collective bargaining agreement is incompatible with federal law.

Statement

The issue involved in this case is a narrow one, and relates simply to the question as to whether an arbitrator designated by the parties under their collective bargaining agreement exceeded his powers by making an award applying the precise terms of relevant provisions of that agreement.

In a collective bargaining agreement effective June 16, 1958 between the respondent union and a large group of shipowners including petitioner the parties agreed that

the issue of a severance pay program, if not agreed upon by the parties, be submitted to arbitration for determination as to whether such a program was suitable and practical for the industry and if so for an award determining the specific provisions of such a program (R. 61).*

Pursuant to that agreement the parties submitted the issue to Arbitrator Mitchell M. Shipman, designated as such under the collective bargaining agreement effective June 16, 1958. An arbitration award was made on July 9, 1959, the decretal provisions of which were:

> "Whenever a Company transfers a vessel to foreign registry, it shall give severance pay to the regular licensed engineers assigned to such vessel.
>
> "A transfer of a vessel shall include any disposition thereof regardless of whether (a) it occurs when the vessel is in active operation or in a laid-up status; and (b) is made directly by the Company or by the Company to an affiliate or subsidiary, which, in turn, makes the disposition to foreign registry.
>
> "The regularly licensed engineers entitled to severance pay shall be the full complement of licensed engineers permanently assigned to the vessel at the time of its last regular full voyage preceding the transfer, regardless of whether they were actually working on the vessel during said voyage" (R. 58-59).

This Shipman Award was then by agreement of the parties incorporated into the succeeding collective bargaining agreement, effective June 16, 1961, which included the petitioner as a party to such agreement. Dr. Donald Shaughnessy was designated in that agreement as permanent arbitrator for all unsettled disputes arising thereunder (R. 55).

* Numbers in parentheses refer to pages in the Papers on Appeal from Order filed by Petitioner as part of the Record.

A dispute arose between the parties herein as to whether, under the contract provision which constituted the Shipman award, certain licensed marine engineers were entitled to compensation to be computed as set forth in that agreement. Petitioner's ships on which those engineers had served had been transferred to foreign registry (R. 55). The engineers involved in the dispute had been permanently assigned to the transferred vessels at the time of those vessels' last regular full voyage preceding their transfer to foreign registry. After the transfer of the vessels to foreign registry the engineers were assigned to new vessels of petitioner (R. 62).

After extensive hearings Dr. Shaughnessy made an award in which he determined that the Shipman award as incorporated in the collective bargaining agreement required payment of severance pay compensation to these engineers (R. 30-37). He held that he was bound by the terms of the Shipman award which the parties had voluntarily incorporated in their collective bargaining agreement, and that the fact that the engineers involved had been transferred to new vessels of the petitioner did not warrant denial of severance pay to them under the terms of the Shipman award (R. 33-36). Arbitrator Shaughnessy noted that in two awards made by Arbitrator Shipman after the latter's original award on severance pay, and prior to the incorporation of the Shipman award in the 1961 agreement between the parties, Shipman had ruled that "whether the licensed engineer is reemployed by the same company on another vessel or by another company on the date of transfer, it is nonetheless clear that he has merely displaced another engineer" (R. 35), and that it is not "material whether a licensed engineer has obtained other employment with the same or another company on the date of transfer, for it is clear that by so doing, he has merely displaced another licensed engineer" (R. 35).

Having concluded that the precise conditions of the Shipman award, *i.e.*, a transfer of vessels to foreign registry

and the fact that there were regular licensed engineers assigned to such vessels, had been proven, Arbitrator Shaughnessy awarded severance pay to such engineers in accordance with the formula for compensation set forth in the Shipman Award.

Petitioner then made application to the Supreme Court of the State of New York, New York County, "for an order directing that the award made by Donald F. Shaughnessy * * * be vacated on the ground that said Donald F. Shaughnessy, the sole arbitrator herein, exceeded his powers and decided matters not submitted to him * * * " (R. 10). Petitioner there contended that "the award went so clearly beyond the intent of the parties and constituted such a perverse misconstruction of their agreement and is so divorced from rationality that it can be accounted for only by one of the kinds of misbehavior cited in law as proper grounds for vacating that award" (R. 25-26). It is apparent that petitioner relied on the provisions of New York State law which set forth the grounds upon which an award may be vacated. Petitioner did not assert Section 301 of the Labor-Management Relations Act of 1947, 61 Stat. 156; 29 U. S. C. § 185 as the basis for the action.

Respondent union made a cross-motion in the same court to confirm the Shaughnessy award, noting among other things in support of its motion:

> "The fact that the severance pay program relates to a situation where engineers' jobs are permanently lost is wholly consistent with the ultimate determination of Arbitrators Shipman and Shaughnessy. The very basis of the program is that when a ship is transferred to foreign registry every engineers' job on that ship is permanently lost to the engineers who had been assigned to the ship and to all other engineers. The acquisition by the Company of other ships and its employment of such engineers on the new ships does not change the fact that the original ships and the jobs thereon are lost forever

> to American marine engineers. The loss of such transferred ships necessarily results in a loss of job opportunities for engineers to the exact extent that the jobs on such ships are eliminated. Had the original ships not been transferred and had the Company acquired additional ships, job opportunities constantly being depleted and diminished by transfers to foreign registry, would have risen in some small degree to alleviate the constant job shrinking process." (R. 68).

Respondent also noted that whatever quarrel the company had must necessarily be with the Shipman Award which it had never contested rather than with Dr. Shaughnessy's enforcement of it (R. 69).

The Supreme Court of the State of New York denied petitioner's motion to vacate the award and granted respondent's motion to confirm. The Court stated:

> "[T]he award itself * * * declares flatly and unequivocally, that whenever 'a Company transfers a vessel to foreign registry, it shall give severance pay to the regular licensed engineers assigned to such vessel.' It makes no exceptions; it imposes no conditions.
>
> So arbitrator Shaughnessy read and applied it to the dispute submitted to him * * *. It was his view * * * that the Shipman award constrained him to find as he did; his duty, he said, was to apply, not to ignore or alter the Shipman award.
>
> "If arbitrator Shaughnessy's interpretation of the Shipman award stands, as I conclude it must, then Grace Line's grievance is in reality directed against the Shipman, rather than the Shaughnessy award. Yet the Committee accepted the Shipman award without question. Not alone did it not subject the award to judicial review, but it affirmatively ratified it when, as above, noted, it embodied it in the 1961 collective bargaining agreement." (R. 106)

While the Court expressed its "want of sympathy with the award" it held that "the question whether the award

should be confirmed or not does not hinge on the court's concurrence with the arbitrator's decision." The Court then concluded that it could not disturb the Shaughnessy award, applying the doctrine that "an award concludes the parties on all the issues, both of fact and of law, submitted to the arbitrator * * *" (R. 106).

The Appellate Division of the Supreme Court of the State of New York unanimously and without opinion affirmed the lower Court's judgment. The Court of Appeals of the State of New York denied without opinion petitioner's application for leave to appeal.

ARGUMENT

1. There is no conflict between Federal law and the law of the State of New York on the function of the Court in respect to arbitration awards. The decision of the State Court confirming the award is clearly correct whether State or Federal law applies.

The arbitration award here involved was based on the precise provisions of the collective bargaining agreement between the parties. The state courts rejected petitioner's claim that the award exceeded the powers of the arbitrator. A contrary determination would lead to the absurd conclusion that the award "exceeded the power of the arbitrator" because the arbitrator considered himself bound not to go beyond the terms of the collective bargaining agreement which was submitted to him by the parties for interpretation and application. In effect, as in most cases where a party to an arbitration does not prevail, the petitioner is simply expressing understandable disappointment, and consequent regret that it became a party to the collective bargaining agreement. In reality, petitioner sought, albeit unsuccessfully, to have the state court review the merits of the dispute and to substitute its judg-

ment for the judgment of the voluntarily agreed upon arbitrator. Petitioner now seeks to have this Court do the same.

There is no need to reach the question of whether Federal or State law should be applied since there is no conflict between the Federal court decisions involving arbitration awards and Section 1462 of the New York Civil Practice Act, as interpreted by the New York courts. This is made apparent in the extended discussion of the entire arbitration process contained in a series of three Supreme Court cases decided in 1960. *Steelworkers* v. *American Manufacturing Co.*, 363 U. S. 564; *Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574; *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593.

In *Steelworkers* v. *Enterprise*, *supra*, this Court said:

> "The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards. As we stated in *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574, decided this day, the arbitrators under these collective bargaining agreements are indispensable agencies in a continuous collective bargaining process.
>
> * * *
>
> "* * * the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." 363 U. S. 593 at 596, 599.

See also: *International Union of Electrical Workers* v. *Otis Elevator Company*, 314 F. 2d 25 (2d Cir.) cert. denied 373 U. S. 949 (1963).

Petitioner, quoting from the *Enterprise* opinion, states the federal rule to be that "If an arbitrator * * * fails to draw the essence of his award from the collective bargaining agreement" both State and Federal courts must refuse to enforce the award.*

But then the petitioner inverts that sentence to urge that this Court thereunder requires that an award must be drawn from the essence of the collective bargaining agreement.**

The interpretation of the applicable Federal law suggested by petitioner is clearly inconsistent with the opinion of this Court in the *Enterprise* case, which clearly states that courts should not review the merits of an arbitration award. As this Court there said, the "plenary review by a court of the merits would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final." 363 U. S. at 599.

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* Brief for Petitioner, pp. 13-14.

** The Court, in its effort to *uphold* the arbitrator's award in accordance with Federal labor policy, found reason to sustain an award accompanied by an ambiguous opinion because it drew its essence from the collective bargaining agreement. In other words, the award's *raison d'etre* was the collective bargaining agreement; it was not fashioned out of thin air. That is a far cry from saying that an arbitrator should ignore the plain meaning of a contract to determine its essence, and that the courts must in turn determine whether the arbitrator has culled the real essence from the agreement.

The New York rule is based on Section 1462 of the New York Civil Practice Act* which provides as one of the grounds for vacating an arbitration award: "4. Where the arbitrators or other persons making the award exceeded their powers." "* * *"

The New York rule on the vacation of arbitration awards is well stated by the New York State Court of Appeals in *States Marine Line* v. *Crooks*, 13 N.Y. 2d 296, 195 N. E. 2d 296 (1963), its latest opinion on that subject. The Court stated:

> "Our function upon this appeal—indeed, the function of any court in a proceeding such as the present—is not to decide the appropriateness, or the wisdom of the award or whether the judges of a court would have rendered the same award had they acted as arbitrators but, rather, to ascertain whether the arbitrator who did make the award exceeded his powers or so imperfectly executed them as to require its vacatur." 13 N. Y. 2d at 212.

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* Section 1462, which is applicable to the instant matter, has since been superseded by Section 7511 of the Civil Pracuce Law and Rules which did not materially change the former provisions. Section 1462 provided as grounds for vacating an award:

> "1. Where the award was procured by corruption, fraud or other undue means.
>
> 2. Where there was evident partiality or corruption in the arbitrators or either of them.
>
> 3. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy or of any other misbehavior by which the rights of any party have been prejudiced.
>
> 4. Where the arbitrators or other persons making the award exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject-matter submitted was not made.
>
> 5. If there was no valid submission or contract, and the objection has been raised under the conditions set forth in section fourteen hundred fifty eight."

In that case, the Court of Appeals shows its awareness of the *Lincoln Mills and Lucas Flour** doctrines when it said:

> "Since the parties herein have not suggested that the present controversy is to be decided under Federal law—on the ground that it involves a contract between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Labor Management Relations Act of 1947 (Section 301(a); see *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448; *Teamsters Local* v. *Lucas Flour Co.*, 369 U. S. 95, 101 et seq.; *Black-Clawson Co., Inc.* v. *International Ass'n of Machinists*, 313 F. 2d 179, 181-182 (2d Cir. 1962)—we need say no more than that *our decision would be the same whether Federal or State law governs*," 13 N. Y. 2d at 585, fn. 2. (Emphasis added.)

State Marine Line v. *Crooks* was decided on November 27, 1963, two months before the Appellate Division unanimously affirmed the New York Supreme Court's decision denying petitioner's motion to vacate the award and six months before the New York Court of Appeals denied petitioner's leave to appeal.

The State and Federal policy of settling industrial disputes by grievance machinery and arbitration rather than in the courts can only be upheld by a strict adherence to the rule of finality of an arbitrator's award. The fact that an occasional award may be unusual and even offensive to some is a necessary corollary and subordinate to the more important policy of permitting the settling of labor disputes by arbitration. This policy "would be undermined if the courts had the final say on the merits of the awards." *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593, 596 (1960).

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* *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448 (1955); *Teamsters* v. *Lucas Flour Co.*, 369 U. S. 95 (1962).

Thus it is not material whether New York State law or Federal law was the basis for the decision below, since they are consistent with each other and would require the same result.*

2. There is no important question of Federal law.

The refusal of the State Court to vacate the arbitration award here, unfair as it may seem to petitioner, involves an unusual *sui generis* factual situation and does not raise any important question of Federal law. This is one of the many thousands of arbitration awards where understandably a disappointed litigant seeks relief from the court because of his disagreement with the decision on the merits. The fact that an award may seem to be harsh or inequitable does not under both the New York State and the Federal rule require or permit the court to review the merits of the dispute. Were either the State or the Federal judicial forum be made available so that the courts would substitute their judgment for the judgment of arbitrators, the courts would be inundated with cases

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* Had the petitioner initiated this action to vacate the award relying on Section 301 of the Labor-Management Relations Act, respondent would then have had as a complete defense to the action that the agreement does not embrace "employees" within the meaning of such provision since the licensed marine engineers covered by the agreement were "supervisors". Respondent would have necessarily been given an opportunity, if found necessary, to submit evidence to the Court on that defense. In *Bull Steamship Co.* v. *National Marine Engineers' Beneficial Association*, 250 F. 2d 332 (2d Cir.) cert. denied, 355 U. S. 932 (1958), the Second Circuit recognized the validity of such a defense by its statement:

> "[I]t appears quite likely that the court below has no jurisdiction under Section 301 of the Taft-Hartley Act, 29 U. S. C. Section 185, for the supervisory status of the MEBA employees of Bull is well established in the pleadings, affidavits and briefs below."

each of which would require a detailed examination of the evidence before the arbitrator and a determination by the court as to whether the arbitrator's award is warranted under the particular circumstances. This would run counter to the Federal and New York State labor policy to encourage final disposition of labor disputes, through the arbitration process.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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